



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,672	04/16/2004	Richard F. Gladney	SMCY-P02-085	9591

7590 10/20/2006

ROPES & GRAY LLP
EDWARD J. KELLY
ONE INTERNATIONAL PLACE
BOSTON, MA 02110-2624

EXAMINER

SANTOS, ROBERT G

ART UNIT	PAPER NUMBER
----------	--------------

3673

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/826,672

Applicant(s)

GLADNEY, RICHARD F.

Examiner

Robert G. Santos

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2006 and on 21 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20060626</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 21, 2006 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3 and 7-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of U.S. Pat. No. 4,128,907 to Gelbart. As concerns claims 1-3 and 8-26, Broyles '729 lacks the use of a mattress foundation (C) having at least one sidewall outer surface (2-5) with a pattern unitarily formed thereon which is substantially planar or three-dimensional, as well as the use of at least one ground support member (f) which also includes a pattern, wherein "unitarily" includes non-attachably and wherein "unitarily formed" includes formed using at least one of molding, etching, embossing, engraving, carving, stamping, silhouetting and sculpting. Gelbart '907 provides the basic teaching of a mattress foundation (2) that "can be

Art Unit: 3673

provided with a surface which simulates natural wood” (see column 3, lines 52-55). The skilled artisan would have found it obvious at the time the invention was made to provide the mattress assembly of Broyles ‘729 with a mattress foundation comprising at least one sidewall outer surface and at least one ground support member each having a pattern unitarily formed thereon, wherein “unitarily” includes non-attachably and wherein “unitarily formed” includes formed using at least one of molding, etching, embossing, engraving, carving, stamping, silhouetting and sculpting, in order to impart a finished appearance to the mattress assembly as desired.

With regards to claim 7, Broyles ‘729 is considered to show a condition wherein a pattern (12) is formed on at least a portion of the upper side of the top surface (1) of the mattress foundation (C) in Figure 1 and in column 2, lines 58-62.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles ‘729 in view of Gelbart ‘907, and further in view of Saputo ‘946. Broyles ‘729, as modified by Gelbart ‘907, does not specifically disclose the use of a headboard tangentially extending vertically along one end of the foundation. Saputo ‘946 provides the basic teaching of a plastic mattress foundation (10) provided with brackets (59, 60) for securing a headboard thereto. The skilled artisan would have found it obvious at the time the invention was made to provide the mattress foundation of Broyles ‘729, as modified by Gelbart ‘907, with a headboard tangentially extending vertically along one end of the foundation in order to impart a more finished appearance thereto.

Art Unit: 3673

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Gelbart '907 and further in view of Saputo '946 as applied to claim 4 above, and further in view of Bellows et al. '191. Broyles '729, as modified by Gelbart '907 and as further modified by Saputo '946, does not specifically disclose a condition wherein the headboard is constructed substantially of plastic material. Bellows et al. '191 provide the basic teaching of a plastic bed frame (10) including a headboard (16) and constructed from a plastic material (see Bellows et al. '191, column 3, lines 37-39). The skilled artisan would have found it obvious at the time the invention was made to provide the mattress foundation of Broyles '729, as modified by Gelbart '907 and as further modified by Saputo '946, with a headboard constructed substantially of plastic material since such a headboard is generally well known as being economical and lightweight as taught by Bellows et al. '191, thereby also facilitating attachment to a mattress foundation.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Gelbart '907 and further in view of Saputo '946 and Bellows et al. '191 as applied to claim 5 above, and further in view of Wallace et al. '537. Broyles '729, as modified by Gelbart '907 and as further modified by Saputo '946 and Bellows et al. '191, does not specifically disclose a condition wherein an outer surface of the headboard includes a pattern. Wallace et al. '537 provide the basic teaching of a headboard (12) provided with a pattern (21) on its outer surface (18). The skilled artisan would have found it obvious at the time the invention was made to provide the mattress foundation of Broyles '729, as modified by Gelbart '907 and as further modified by Saputo '946 and Bellows et al. '191, with a headboard having an outer surface

Art Unit: 3673

including a pattern in order to “enhance the attractiveness and beauty of the structure” as desired (see Wallace et al. ‘537, column 1, lines 3-9).

Response to Amendment

Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Weinman et al. ‘439, Gladney ‘844, Weinman et al. ‘850, Weinman et al. ‘037, Weinman et al. ‘934, Riestra et al. ‘906, Barré et al. ‘699, Anstadt et al. ‘944, Lampe et al. ‘401, Blessinger et al. ‘132, Krauth ‘904, Lampe et al. ‘002, Gunter ‘225, Thomas ‘887, Fleck ‘228, Jacobs ‘974 and Gladney ‘890.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (571) 272-7048. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia L. Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3673

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Robert G. Santos
Primary Examiner
Art Unit 3673

R.S.
October 16, 2006